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TIME  
28 January 1985

## Plugging the Leak of Secrets

*New efforts to apply a 1917 law worry civil libertarians*

**S**ooner or later, every Administration is stung or embarrassed by leaks of classified information to the press, denounces them as damaging to national security and vows to find those responsible. But supposing it does catch the leakers. What can it do to them? Fire or demote them, perhaps, but not fine or jail them—or so it has always been assumed. While the U.S. has specific laws governing dissemination of highly sensitive material (atomic secrets, identities of covert agents), there are no statutes comparable to Britain's Official Secrets Act, generally making all types of unauthorized disclosure of information a crime. Congress has resisted attempts to write such a law as a potential infringement on free speech.

The Reagan Administration has tried to stop leaks through a series of expanded restrictions on U.S. employees, including lie-detector tests; insiders say that since taking office the Administration has had a steady average of 20 to 30 investigations in progress. This activity might increase as the Pentagon moves toward high-tech, supersecret weaponry, such as the proposed Star Wars antimissile system. Moreover, to the alarm of civil libertarians, the Administration now claims that leakers can be jailed under an existing law: the Espionage Act of 1917.

That law was passed under the impetus of U.S. entry into World War I and has been invoked successfully only against ac-

tual spies. There has never been a court test of its applicability to people who give classified information to the press rather than to foreign intelligence agents. The Nixon Administration did attempt to use it in 1971 against Daniel Ellsberg and Anthony Russo, who were accused of leaking the Pentagon papers, but the case was later dismissed because of misconduct by the prosecution. Now, however, the Government has brought what seems to be a test case against Samuel Loring Morison, 40, an analyst at the Naval Intelligence Support Center (NISC) and grandson of famed Historian Samuel Eliot Morison.

He is an awkward symbol for both the Government and its critics. Morison's fingerprint turned up on one of three U.S. satellite pictures that had disappeared from the desk of an NISC colleague and found their way into foreign hands. The photos showed a Soviet aircraft carrier under construction at a Black Sea port. The Government, however, cannot contend that Morison was dealing with an enemy: he turned over the pictures to *Jane's Defence Weekly*, a British magazine that published them last August. FBI analysis of the ribbon in Morison's office typewriter indicated that he wrote two letters to his British editors at *Jane's*, where he was employed part-time at \$5,000 a year with the knowledge of his Pentagon supervisors. One letter thanked *Jane's* for remuneration for certain "items" that he had supplied; the other described his NISC job as a "pit" and expressed a wish to work full-time for *Jane's*.

Morison was indicted by a federal grand jury in Baltimore last October on a charge of violating two sections of the Espionage Act. They make it a crime to convey documents or pictures relating to national defense to unauthorized individuals. Morison could be liable to a \$40,000 fine and 40 years in prison. The U.S. Government will presumably contend that publication of the pictures may have given

the Soviets valuable information about the capabilities of U.S. intelligence satellites.

Morison's lawyers moved last month to get the case dismissed on the ground that the language of the Espionage Act is "impermissibly vague." U.S. District Judge Joseph H. Young has yet to rule on the issue. If Morison is brought to trial, the defense plans to argue that the pictures gave the Soviets no information that they could not be presumed to possess. Moreover, his lawyers will take the position that Morison has been improperly singled

out for "selective prosecution." They note that a Government interagency group, headed by Deputy Assistant Attorney General Richard Willard, reported last March that "the unauthorized publication of classified information is a routine daily occurrence in the U.S." The report added that the applicability of the Espionage Act to such disclosures "is not entirely clear."

Some civil libertarians fear that conviction of Morison would set a precedent that could be used against journalists and stifle public debate about defense policies. Mark Lynch, an American Civil Liberties Union lawyer who is assisting the Morison defense, says that "the Government could also begin prosecuting journalists as spies or hauling them before grand juries under threat of prison" to make them reveal their sources. Critics contend that such a use of the Espionage Act would assist the Government in improperly keeping secret much information that the public needs to evaluate defense policies.

**S**ome lawyers suspect that if the Government loses the Morison case, it will make a renewed effort to get Congress to pass a law to punish disclosures of information that do not constitute espionage but nonetheless damage the U.S. Under Secretary of Defense Fred Ikle hinted at such an effort last month by telling a Princeton meeting that "the laws are not adequate" and vowing that the Administration "will fight on all fronts."

British experience indicates that such a law is extremely difficult to frame. The British Official Secrets Act is so broad that it is widely regarded as meaningless; read literally it would subject to prosecution a government employee who disclosed how many cups of tea are served weekly in his department. A major reason for not repealing it is that its many critics cannot agree on what to put in its place.

In the U.S., most experts believe, an official secrets act could be enacted only if it were narrowly drawn. Even then, says former CIA Director Stansfield Turner, "the press will be up in arms, the civil rights community will be up in arms, and staunch conservatives will be for hanging the guilty before trial." The issue, however, will not go away. The Government does need to protect military secrets, the public does need information to judge defense policies, and the line between the two is surpassingly difficult to draw. —By George J. Church. Reported by Anne Constable/Washington



Test-Case Defendant Samuel Loring Morison  
*Does the Espionage Act cover only spies?*

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